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9 *Attorneys for Plaintiff*

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Jerome Wagner, individually and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 Harley-Davidson Motor Company Group,  
17 LLC,

18 Defendant.  
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Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Jerome Wagner (“Plaintiff”) brings this action on behalf of himself  
2 and all others similarly situated against Defendant Harley-Davidson Motor Company  
3 Group, LLC (“Defendant” or “Harley Davidson”) for the manufacture, marketing,  
4 and sale of consumer products that include motorcycles, parts, accessories, and other  
5 products sold under the Harley-Davidson brand name (the “Products”). Plaintiff  
6 makes the following allegations pursuant to the investigation of his counsel and  
7 based upon information and belief, except as to the allegations specifically pertaining  
8 to himself, which are based on personal knowledge.

### 9 **NATURE OF ACTION**

10 1. This is a class action against Defendant for the marketing, manufacture,  
11 and/or sale of consumer products (the “Products”), the warranties of which include  
12 statements that condition the continued validity of the warranty on the use of only an  
13 authorized repair service and/or authorized replacement parts (a “tying arrangement”  
14 or “unlawful repair restriction”). Tying arrangements that condition a consumer  
15 product’s warranty on the use of a specific repair service in this manner violate state  
16 and federal law. Had Plaintiff – or reasonable class members – been aware that the  
17 repair restriction was unlawful, he would not have purchased the Product, or would  
18 have paid significantly less for it.

19 2. Plaintiff brings his claims against Defendant individually and on behalf  
20 of a class of all other similarly situated purchasers of the Products for: (i) violations  
21 of the Magnuson-Moss Warranty Act, (ii) unjust enrichment, (iii) fraud, (iv)  
22 fraudulent omission, and (v) violations of Arizona Rev. Stat. §§ 44-1521 *et seq.*

### 23 **PARTIES**

24 3. Plaintiff Jerome Wagner is a resident of Mesa, Arizona and a citizen of  
25 Arizona. Mr. Wagner bought a Harley-Davidson Heritage Classic 114 from a  
26 dealership in Arizona for \$17,999.00. Mr. Wagner purchased the Product,  
27 reasonably believing its warranty complied with state and federal law. However, the  
28 Product Mr. Wagner purchased did not comply with state and federal law because of

1 the unlawful repair restriction attached to the warranty that prohibited him from  
2 repairing it. Mr. Wagner would not have purchased the Product, or would have paid  
3 significantly less for the Product, had he known that the Product did not comply with  
4 state and federal law.

5 4. When Mr. Wagner purchased the Product, he would have liked to have  
6 the option to repair his Product himself, but his warranty as written prohibited him  
7 from doing so. Such an option was material and valuable to him.

8 5. Defendant Harley-Davidson Motor Company Group, LLC is a  
9 Wisconsin limited liability company with its principal office or place of business at  
10 3700 West Juneau Avenue, Milwaukee, Wisconsin 53208. Defendant has  
11 manufactured, advertised, offered for sale, sold, and distributed Harley-Davidson  
12 motorcycles, parts, accessories, and other products to consumers throughout the  
13 United States.

#### 14 **JURISDICTION AND VENUE**

15 6. This Court has subject matter jurisdiction over this action pursuant to 28  
16 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate  
17 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and  
18 at least one Class member is a citizen of a state different from Defendant.

19 7. This Court has personal jurisdiction over Defendant because a  
20 substantial portion of the events giving rise to Plaintiff's claims occurred here.

21 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a  
22 substantial portion of the events giving rise to Plaintiff's claims took place within  
23 this District.

#### 24 **COMMON FACTUAL ALLEGATIONS**

##### 25 **I. Defendant's Business Activities**

26 9. Defendant manufactures, markets, and sells consumer products that  
27 include motorcycles, parts, accessories, and other products sold under the Harley-  
28 Davidson brand name (the "Products").

1           10. All the relevant Products include the same unlawful repair restriction in  
2 their warranties.

3           11. Defendant has advertised, marketed, offered for sale, sold, and  
4 distributed products through authorized dealers to consumers.

5           12. Defendant's Products include a "written warranty" as defined by the  
6 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6), in the form of a limited  
7 warranty ("Warranty Statement").

8           13. The length of the limited warranty offered by Defendant is twenty-four  
9 months.

10          14. Defendant's limited warranty includes the aforementioned unlawful  
11 repair restriction.

12          15. Defendant's Products also include a written warranty in the form of an  
13 optional Extended Service Plan.

14          16. Defendant's Extended Service Plan includes an option for 2  
15 Years/Unlimited Mileage.

16 **II. Defendant Conditions Warranty Coverage On Unlawful Repair**  
17 **Restrictions**

18          17. In numerous instances, Defendant, through its warranty statements on  
19 the Products, condition warranty coverage on the usage of Defendant's repair  
20 services to perform maintenance and repair work, rather than allowing consumers to  
21 repair the product themselves or take it to a third-party repair service.

22          18. For example, Defendant's 2021 warranty states: "Genuine Harley-  
23 Davidson parts are engineered and tested specifically for use on your motorcycle.  
24 Insist that your authorized Harley-Davidson dealer uses only genuine Harley-  
25 Davidson replacement parts and accessories to keep your Harley-Davidson  
26 motorcycle and its limited warranty intact."<sup>1</sup>

27  
28 <sup>1</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2123140HarleyDavidsonComplaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2123140HarleyDavidsonComplaint.pdf).

1           19. The 2021 warranty also states that “This limited warranty will not apply  
2 to any motorcycle ... 1. Which has not been operated or maintained as specified in  
3 the owner’s manual. ... 4. Which has off-road or competition parts installed to  
4 enhance performance, a trailer hitch, or has other unapproved modifications (even if  
5 these modifications include genuine Harley-Davidson parts and accessories that are  
6 not approved for use on your motorcycle). These modifications may void all or parts  
7 of your new motorcycle limited warranty. See an authorized Harley-Davidson dealer  
8 for details.”<sup>2</sup>

9           20. Defendant’s 2021 warranty states that the “[u]se of aftermarket  
10 performance parts may void all or parts of your limited warranty. See an authorized  
11 Harley-Davidson dealer for details” and that “the use of parts and service procedures  
12 other than Harley-Davidson approved parts and service procedures may void the  
13 limited warranty.”<sup>3</sup>

14           21. Defendant has not provided genuine Harley-Davidson replacement parts  
15 to consumers without charge under the warranty. Defendant also did not seek a  
16 waiver from the Federal Trade Commission that would permit it to condition  
17 warranty coverage on the use of genuine Harley-Davidson parts and accessories.

18           22. Defendant also fails to fully set forth in its warranty what is covered by  
19 or excluded from the warranty. Instead, as described above, the warranty directs the  
20 owner to check with a local Harley-Davidson dealer to fully understand the  
21 warranty’s coverage. In addition, the 2021 warranty states that “[s]ome countries,  
22 states or other locations may require all regular maintenance and service work to be  
23 done by an authorized Harley-Davidson dealer for your warranty to remain in effect.  
24 Check with your local Harley-Davidson dealer for local requirements.”<sup>4</sup>

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26           <sup>2</sup> *Id.*

27           <sup>3</sup> *Id.*

28           <sup>4</sup> *Id.*

1           23.   Additionally, by choosing to offer a limited warranty rather than a full  
2 warranty, Defendant has chosen to not obligate itself to providing a truly free repair.  
3 This is because “limited warranties are not subject to section 2304, and, thus, the  
4 substantive remedies provided for in that section, which include a full refund of the  
5 purchase price, are not available for a breach of a limited warranty.” *Bollom v.*  
6 *Brunswick Corp.*, 453 F. Supp. 3d 1206, 1223 (D. Minn. 2020) (citing 15 U.S.C.A. §  
7 2304).

8           24.   Under the terms of the warranty, purchasers are bound to only use  
9 authorized repair services.

10          25.   Under Defendant’s warranty, Defendant in effect provides parts in a  
11 manner which impede or preclude the choice by the consumer to perform necessary  
12 labor to install such parts.

13          26.   By conditioning its warranty in this manner, Defendant has violated the  
14 tying prohibition in the Magnuson-Moss Warranty Act, which prohibits companies  
15 from conditioning their warranties on a consumer’s use of any article or service  
16 (other than an article or service provided without charge under the terms of the  
17 warranty) identified by brand, trade, or corporate name.

18          27.   Defendant’s practices also violate state laws, as well as Section 5(a)(1)  
19 of the FTC Act, 15 U.S.C. § 45(a)(1), which prohibits unfair or deceptive actors or  
20 practices, as well as unfair methods of competition, in or affecting commerce.  
21 Section 5 also encompasses violations of the Sherman Act, which prohibits certain  
22 exclusionary and other anticompetitive conduct.

### 23   **III.   The Magnuson-Moss Warranty Act**

24          28.   The Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2312, is the  
25 federal law that regulates consumer warranties and the procedures used to resolve  
26 warranty disputes. It also directs the FTC to prescribe rules enforcing certain  
27 requirements pertaining to the use and content of consumer warranties.  
28

1           29. Section 2302(c) of the Magnuson-Moss Warranty Act, 15 U.S.C. §  
2 2302(c), prohibits any warrantor from conditioning a warranty on the consumer's  
3 using, in connection with the warranted product, any article or service (other than an  
4 article or service provided without charge under the terms of the warranty) which is  
5 identified by brand, trade, or corporate name.

6           30. An FTC Rule interpreting this provision specifically addresses warranty  
7 language (nearly identical to Defendant's warranty):

8                   No warrantor may condition the continued validity of a  
9 warranty on the use of only authorized repair service and/or  
10 authorized replacement parts for non-warranty service and  
11 maintenance (other than an article of service provided  
12 without charge under the warranty or unless the warrantor  
13 has obtained a waiver pursuant to section 102(c) of the Act,  
14 15 U.S.C. 2302(c)). For example, provisions such as,  
15 "This warranty is void if service is performed by anyone  
16 other than an authorized 'ABC' dealer and all replacement  
17 parts must be genuine 'ABC' parts," and the like, are  
18 prohibited where the service or parts are not covered by the  
19 warranty. These provisions violate the Act in two ways.  
20 First, they violate the section 102(c), 15 U.S.C. 2302(c),  
21 ban against tying arrangements. Second, such provisions  
22 are deceptive under section 110 of the Act, 15 U.S.C. 2310,  
23 because a warrantor cannot, as a matter of law, avoid  
24 liability under a written warranty where a defect is  
25 unrelated to the use by a consumer of "unauthorized"  
26 articles or service.

27 16 CFR § 700.10(c).

#### 28 **IV. Section 5 Of The Federal Trade Commission Act**

29           31. The FTC has found that a "manufacturer's use of a repair restriction  
30 could be challenged as an unfair practice under Section 5 of the FTC Act if the repair  
31 restriction causes substantial injury (e.g., monetary harm or unwarranted health and  
32 safety risks) that is not outweighed by countervailing benefits to consumers or

1 competition that the practice produces, and the injury could not have been reasonably  
2 avoided by consumers.”<sup>5</sup>

3 32. Section 5 of the Federal Trade Commission Act prohibits unfair or  
4 deceptive actors or practices, as well as unfair methods of competition, in or  
5 affecting commerce. Section 5 also encompasses violations of the Sherman Act,  
6 which prohibits certain exclusionary and other anticompetitive conduct. *See, e.g.,*  
7 *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451 (1992); *United*  
8 *States v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001).

9 33. The FTC has noted that “[r]estricting consumers and businesses from  
10 choosing how they repair products can substantially increase the total cost of repairs,  
11 generate harmful electronic waste, and unnecessarily increase wait times for repairs.  
12 In contrast, providing more choice in repairs can lead to lower costs, reduce e-waste  
13 by extending the useful lifespan of products, enable more timely repairs, and provide  
14 economic opportunities for entrepreneurs and local businesses.”<sup>6</sup>

15 34. The FTC has issued several warning letters to companies that appeared  
16 to be engaged in warranty tying in violation of the Magnuson-Moss Warranty Act  
17 and has brought at least one enforcement action. *See e.g.* Exhibits 1-6.

18 35. This includes letters to companies that offer ostensibly free repairs  
19 under the warranty.

20 36. Microsoft for example, was sent a compliance warning letter from the  
21 FTC for including a provision in the Xbox One warranty that stated that “Microsoft  
22 is not responsible and this warranty does not apply if Your Xbox One or Accessory  
23 is: ... (f) repaired by anyone other than Microsoft.” *See* Exhibit 1. This is despite the  
24 warranty stating that “Microsoft will (at its option) repair or replace it, or refund the  
25 purchase price to You.” *See* Exhibit 8, pg. 2.

26 <sup>5</sup> [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf), pg 14.

27 <sup>6</sup> [https://www.ftc.gov/system/files/documents/public\\_statements/1592330/p194400repairrestrictions\\_policystatement.pdf](https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictions_policystatement.pdf), pg 1.



1           37. In response to this enforcement letter, Microsoft updated their warranty  
2 to remove the offending provision.<sup>7 8</sup>

3           38. The FTC has concluded that “it is clear that repair restrictions ... steered  
4 consumers into manufacturers’ repair networks or to replace products before the end  
5 of their useful lives.”<sup>9</sup>

6           39. The FTC has also expressed concern that repair restrictions “may place  
7 a greater financial burden on communities of color and lower-income Americans.”<sup>10</sup>

8           40. While manufacturers explain that these repair restrictions often arise  
9 from their desire to protect intellectual property rights and prevent injuries and other  
10 negative consequences resulting from improper repairs, the FTC has found that such  
11 justifications “should be rejected if found to be a mere pretext for anticompetitive  
12 conduct.”<sup>11</sup>

13           41. Due to these factors, on July 21, 2021, the FTC unanimously voted to  
14 ramp up law enforcement against repair restrictions that prevent small businesses,  
15 workers, consumers, and even government entities from fixing their own products.<sup>12</sup>

## 16 **V. FTC’s June 2022 Action Against Defendant**

17           42. In June, 2022, the FTC took action against Defendant for allegations  
18 that are substantially identical to this complaint.<sup>13 14</sup>

19  
20 <sup>7</sup> [https://www.ign.com/articles/2018/05/10/nintendo-and-sony-update-their-warranty-policies-](https://www.ign.com/articles/2018/05/10/nintendo-and-sony-update-their-warranty-policies-following-ftc-warning)  
21 [following-ftc-warning](https://www.ign.com/articles/2018/05/10/nintendo-and-sony-update-their-warranty-policies-following-ftc-warning) (last accessed June 6, 2022).

22 <sup>8</sup> See exhibit 9 for Microsoft’s updated warranty.

23 <sup>9</sup> “Nixing the Fix: An FTC Report to Congress on Repair Restrictions”, available at  
[https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf)  
24 [restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf), pg 6.

25 <sup>10</sup> *Id.* at 5.

26 <sup>11</sup> *Id.* at 10.

27 <sup>12</sup> [https://www.ftc.gov/news-events/press-releases/2021/07/ftc-ramp-law-enforcement-against-](https://www.ftc.gov/news-events/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions)  
28 [illegal-repair-restrictions](https://www.ftc.gov/news-events/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions).

<sup>13</sup> [https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-action-against-harley-](https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-action-against-harley-davidson-westinghouse-illegally-restricting-customers-right-repair-0)  
[davidson-westinghouse-illegally-restricting-customers-right-repair-0](https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-action-against-harley-davidson-westinghouse-illegally-restricting-customers-right-repair-0)

<sup>14</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2123140HarleyDavidsonComplaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2123140HarleyDavidsonComplaint.pdf)

1           43. According to the FTC's complaint, Defendant has been imposing illegal  
2 warranty terms that voided customers' warranties if they used anyone other than  
3 Defendant and Defendant's authorized dealers to get parts or repairs for their  
4 products. The FTC also alleged that Harley-Davidson failed to fully disclose all of  
5 the terms of its warranty in a single document, requiring consumers to contact an  
6 authorized dealership for full details. The FTC alleges that these terms harm  
7 consumers and competition.

8                           **CLASS REPRESENTATION ALLEGATIONS**

9           44. Plaintiff seeks to represent a class defined as all purchasers of Harley-  
10 Davidson branded products in the United States with warranty provisions that  
11 prohibits self-repair and/or the use of unauthorized parts (the "Class"). Excluded  
12 from the Class are persons who made such purchases for purpose of resale.

13           45. Plaintiff also seeks to represent a subclass of all Class Members who  
14 purchased Harley-Davidson branded products in the State of Arizona with warranty  
15 provisions that prohibits self-repair and/or the use of unauthorized parts (the  
16 "Arizona Subclass") (collectively with the Class, the "Classes").

17           46. Subject to additional information obtained through further investigation  
18 and discovery, the above-described Classes may be modified or narrowed as  
19 appropriate, including through the use of multi-state subclasses.

20           47. At this time, Plaintiff does not know the exact number of members of  
21 the aforementioned Class and Arizona Subclass ("Class Members" and "Subclass  
22 Members," respectively) but believes it numbers in the hundreds of thousands.  
23 Given the size of the Defendant's operation and the number of retail stores in the  
24 United States selling Defendant's Products, Plaintiff believes that Class and Subclass  
25 Members are so numerous that joinder of all members is impracticable.

26           48. There is a well-defined community of interest in the questions of law  
27 and fact involved in this case. Questions of law and fact common to the members of  
28

1 the Classes that predominate over questions that may affect individual Class  
2 members include:

- 3 (a) Whether Defendant misrepresented and/or failed to disclose material  
4 facts concerning the Products;
- 5 (b) whether Defendant's conduct was unfair and/or deceptive;
- 6 (c) whether Defendant has been unjustly enriched as a result of the  
7 unlawful conduct alleged in this Complaint such that it would be  
8 inequitable for Defendant to retain the benefits conferred upon  
9 Defendant by Plaintiff and the Classes;
- 10 (d) whether Plaintiff and the Classes sustained damages with respect to the  
11 common law claims asserted, and if so, the proper measure of their  
12 damages;
- 13 (e) whether Defendant's conduct violates the Magnuson-Moss Warranty  
14 Act; and
- 15 (f) whether Defendant's conduct violates section 5 of the Federal Trade  
16 Commission Act.

17 49. Plaintiff's claims are typical of those of the Classes because Plaintiff,  
18 like all members of the Classes, purchased, in a typical consumer setting,  
19 Defendant's Products, and Plaintiff sustained damages on account of Defendant's  
20 wrongful conduct.

21 50. Plaintiff will fairly and adequately protect the interests of the Classes  
22 and has retained counsel that is experienced in litigating complex class actions.  
23 Plaintiff has no interests which conflict with those of the Classes.

24 51. A class action is superior to other available methods for the fair and  
25 efficient adjudication of this controversy, especially given the potentially modest  
26 individual damages suffered by individual class members.

27 52. The prosecution of separate actions by members of the Classes would  
28 create a risk of establishing inconsistent rulings and/or incompatible standards of

1 conduct for Defendant. For example, one court might enjoin Defendant from  
2 performing the challenged acts, whereas another might not. In addition, individual  
3 actions could be dispositive of the interests of the Classes even where certain Class  
4 or Subclass Members are not parties to such actions.

5 **COUNT I**  
6 **Violation Of The Magnuson-Moss Warranty Act,**  
7 **15 U.S.C. §§ 2301, *et seq.***

8 53. Plaintiff incorporates by reference and re-alleges herein all paragraphs  
9 alleged above.

10 54. Plaintiff brings this claim individually and on behalf of the members of  
11 the proposed Classes against Defendant.

12 55. The Products are consumer products as defined in 15 U.S.C. § 2301(1).

13 56. Plaintiff and the Class and Subclass Members are consumers as defined  
14 in 15 U.S.C. § 2301(3).

15 57. Defendant is a supplier and warrantor as defined by the Warranty Act  
16 because it is a supplier or other person who gives or offers to give a written warranty  
17 or who is or may be obligated under an implied warranty. 15 U.S.C. § 2301(4) and  
18 (5).

19 58. No warrantor may condition the continued validity of a warranty on the  
20 use of only authorized repair service and/or authorized replacement parts for non-  
21 warranty service and maintenance (other than an article of service provided without  
22 charge under the warranty or unless the warrantor has obtained a waiver pursuant to  
23 section 102(c) of the Act, 15 U.S.C. 2302(c)). 16 CFR § 700.10(c).

24 59. In connection with the marketing and sale of the Product, Defendant has  
25 conditioned a warranty on the consumer's using, in connection with the warranted  
26 Product, with the use of only an authorized repair service and/or authorize  
27 replacement parts. 16 CFR § 700.10(c).  
28

1           60. For example, Defendant’s 2021 warranty states: “Genuine Harley-  
2 Davidson parts are engineered and tested specifically for use on your motorcycle.  
3 Insist that your authorized Harley-Davidson dealer uses only genuine Harley-  
4 Davidson replacement parts and accessories to keep your Harley-Davidson  
5 motorcycle and its limited warranty intact.”<sup>15</sup>

6           61. The 2021 warranty also states that “This limited warranty will not apply  
7 to any motorcycle ... 1. Which has not been operated or maintained as specified in  
8 the owner’s manual. ... 4. Which has off-road or competition parts installed to  
9 enhance performance, a trailer hitch, or has other unapproved modifications (even if  
10 these modifications include genuine Harley-Davidson parts and accessories that are  
11 not approved for use on your motorcycle). These modifications may void all or parts  
12 of your new motorcycle limited warranty. See an authorized Harley-Davidson dealer  
13 for details.”

14           62. Defendant’s 2021 warranty states that the “[u]se of aftermarket  
15 performance parts may void all or parts of your limited warranty. See an authorized  
16 Harley-Davidson dealer for details” and that “the use of parts and service procedures  
17 other than Harley-Davidson approved parts and service procedures may void the  
18 limited warranty.”

19           63. Defendant has not provided genuine Harley-Davidson replacement parts  
20 to consumers without charge under the warranty. Defendant also did not seek a  
21 waiver from the Federal Trade Commission that would permit it to condition  
22 warranty coverage on the use of genuine Harley-Davidson parts and accessories.

23           64. Additionally, warrantors offering a limited warranty that provides only  
24 for replacement of defective parts and no portion of labor charges, are prohibited  
25 from conditioning that the consumer use only service (labor) identified by the  
26 warrantor to install the replacement parts. A warrantor or his designated  
27

28 <sup>15</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2123140HarleyDavidsonComplaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2123140HarleyDavidsonComplaint.pdf).

1 representative may not provide parts under the warranty in a manner which impedes  
2 or precludes the choice by the consumer of the person or business to perform  
3 necessary labor to install such parts. 16 C.F.R. § 700.10(b).

4 65. Defendant also violates this provision by requiring that any installation  
5 of parts on Defendant's products be performed with the authorization of Defendant.

6 66. Defendant, a warrantor, also failed to include, for a product that actually  
7 cost consumers more than \$15, all warranty terms in a single document that contains  
8 a clear description and identification of products, parts, characteristics, components,  
9 or properties covered by and, where necessary for clarification, excluded from the  
10 warranty, as required by the Disclosure Rule, 16 C.F.R. § 701.3(a)(2). Thus, the acts  
11 or practices of the Defendant violate Section 701.3(a)(2) of the Disclosure Rule  
12 which caused Plaintiff actual damages.

13 67. By reason of Defendant's breach of warranties, Defendant violated the  
14 statutory rights due Plaintiff and the Class and Subclass Members pursuant to the  
15 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby economically  
16 damaging Plaintiff and the Class and Subclass Members.

17 68. Plaintiff and the Class and Subclass Members were injured as a direct  
18 and proximate result of Defendant's breach because they would not have purchased  
19 the Products if they knew the truth about the unlawful nature of the Products or  
20 would have paid substantially less for them.

21 **COUNT II**  
22 **Unjust Enrichment**

23 69. Plaintiff incorporates by reference and re-alleges herein all paragraphs  
24 alleged above.

25 70. Plaintiff brings this claim individually and on behalf of the members of  
26 the proposed Classes against Defendant.

27 71. Plaintiff and members of the Classes conferred benefits on Defendant  
28 by purchasing the Product.

72. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and Class and Subclass Members' purchases of the Product. Retention of those moneys under these circumstances is unjust and inequitable because Defendant did not disclose that the repair restriction was unlawful and unenforceable. These omissions caused injuries to Plaintiff and Class and Subclass members because they would not have purchased the Products if the true facts were known or would have paid substantially less for the Products.

73. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Classes is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Classes for its unjust enrichment, as ordered by the Court.

**COUNT III**  
**Fraud**

74. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

75. Plaintiff brings this claim individually and on behalf of the members of the Classes against Defendant.

76. As discussed above, Defendant provided Plaintiff and members of the Classes with false or misleading material information about the Products.

77. Specifically, Defendant indicated to Plaintiff and members of the Classes that they would be unable to repair or use parts not authorized by Defendant on the products that they had just purchased. Defendant added this provision knowingly in order to encourage Plaintiff and members of the Classes to purchase new Products and/or replacement parts at inflated prices rather than repair older Products or purchase third-party parts.

78. Defendant misrepresented these unlawful repair restrictions as binding and enforceable even though such restrictions were explicitly unlawful according to FTC regulations and thus unenforceable.

79. These misrepresentations were made with knowledge of their falsehood.

80. The misrepresentations made by Defendant, upon which Plaintiff and members of the Classes reasonably and justifiably relied, were intended to induce, and actually induced Plaintiff and members of the Classes to purchase Products that they otherwise would not have or at least pay substantially more for the product than they would have.

81. The fraudulent actions of Defendant caused damage to Plaintiff and members of the Classes in the form of price premiums and are entitled to damages and other legal and equitable relief as a result.

**COUNT IV**  
**Fraudulent Omission**

82. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

83. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against Defendant.

84. This claim is based on fraudulent omissions concerning the unlawfulness of the repair restrictions that are included in Defendant's warranties. As discussed above, Defendant failed to disclose that the Products' repair restrictions were unlawful and unenforceable.

85. The false and misleading omissions were made with knowledge of their falsehood. Defendant manufactures, markets, and sells motorcycle parts and accessories nationwide and knows that the FTC has stated that repair restrictions of the type that appears on Defendant's warranty are unlawful. Nonetheless, Defendant continued to include its unlawful repair restrictions on its Products.

86. The false and misleading omissions were made by Defendant, upon which Plaintiff and members of the proposed Classes reasonably and justifiably relied, and were intended to induce and actually induced Plaintiff and members of



1 the Classes to purchase Products that they otherwise would not have or at least pay  
2 substantially more for the Products than they otherwise would have.

3 87. The fraudulent actions of Defendant caused damage to Plaintiff and  
4 members of the proposed Classes, who are entitled to damages and punitive  
5 damages.

6 **COUNT V**

7 **Arizona Consumer Fraud Act, Arizona Rev. Stat. §§ 44-1521, *et seq.***

8 88. Plaintiff incorporates by reference and re-alleges each and every  
9 allegation set forth above as though fully set forth herein.

10 89. Plaintiff brings this claim individually and on behalf of members of the  
11 Arizona Subclass against Defendant.

12 90. By the acts and conduct alleged herein, Defendant committed deceptive  
13 acts and practices concerning the unlawfulness of the repair restrictions that are  
14 included in Defendant's warranties. As discussed above, Defendant failed to  
15 disclose that the Products' repair restriction was unlawful and unenforceable.

16 91. The foregoing deceptive acts and practices were directed at consumers.

17 92. The foregoing deceptive acts and practices are misleading in a material  
18 way because they fundamentally misrepresent the enforceability of the Product's  
19 repair restriction in a way intended to discourage legal repair of the Products.

20 93. Defendant's conduct is also misleading in a material way because, as  
21 discussed above, it fails to comport with Section 5(a)(1) of the FTC Act, 15 U.S.C. §  
22 45(a)(1) which prohibits unfair or deceptive actors or practices, as recognized by the  
23 Federal Trade Commission.

24 94. Defendant's conduct is also materially misleading because Defendant, a  
25 warrantor, also failed to include, for a product that actually cost consumers more  
26 than \$15, all warranty terms in a single document that contains a clear description  
27 and identification of products, parts, characteristics, components, or properties  
28

1 covered by and, where necessary for clarification, excluded from the warranty, as  
2 required by the Disclosure Rule, 16 C.F.R. § 701.3(a)(2). Thus, the acts or practices  
3 of the Defendant, as violate Section 701.3(a)(2) of the Disclosure Rule, and Section  
4 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

5 95. Plaintiff and Arizona Subclass Members were injured as a direct and  
6 proximate result of Defendant's breach because they would not have purchased the  
7 Products if they knew the truth about the unlawful nature of the Products or would  
8 have paid substantially less for them.

9 96. On behalf of himself and other members of the Arizona Subclass,  
10 Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover  
11 his actual damages, punitive damages, and reasonable attorneys' fees.

12 **COUNT VI**  
13 **Declaratory Judgment**

14 97. Plaintiff incorporates by reference and re-alleges each and every  
15 allegation set forth above as though fully set forth herein.

16 98. Plaintiff brings this claim individually and on behalf of members of the  
17 Classes against Defendant.

18 99. As described above, under Federal law it is unlawful for Defendant to  
19 include a tying arrangement that voids the warranties of the Products if a user  
20 attempts to self-repair the Products.

21 100. Plaintiff cannot repair his own Product according to the Product's  
22 warranty as currently written.

23 101. There is an actual controversy between the parties, requiring a  
24 declaratory judgment.

25 102. This claim for declaratory judgment is brought pursuant to 28 U.S.C. §§  
26 2201, *et seq.*, seeking a determination by the Court: (a) that this action may proceed  
27 and be maintained as a class action; (b) that Defendant's unlawful repair restrictions  
28 are void and unenforceable; (c) that an award of reasonable attorneys' fees and costs

1 of suit to Plaintiff and the Class is appropriate; and such other and further relief as is  
2 necessary and just may be appropriate as well.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
5 situated, seeks judgment against Defendant, as follows:

- 6 (a) For an order certifying the nationwide Class and Arizona  
7 Subclass under Rule 23 of the Federal Rules of Civil Procedure  
8 and naming Plaintiff as representative of the Class and Arizona  
9 Subclass and Plaintiff's attorneys as Class Counsel to represent  
10 the Class and Arizona Subclass Members;
- 11 (b) For an order declaring the Defendant's conduct violates the  
12 statutes referenced herein;
- 13 (c) For an order finding in favor of Plaintiff, the nationwide Class,  
14 and the Arizona Subclass on all counts asserted herein;
- 15 (d) For compensatory, statutory, and punitive damages in amounts  
16 to be determined by the Court and/or jury;
- 17 (e) An award of statutory penalties to the extent available;
- 18 (f) For pre-judgment interest on all amounts awarded;
- 19 (g) For an order of restitution and all other forms of monetary  
20 relief; and
- 21 (h) For an order awarding Plaintiff, the Class, and Arizona  
22 Subclass their reasonable attorneys' fees and expenses and costs  
23 of suit.

24  
25 **DEMAND FOR TRIAL BY JURY**

26 Pursuant to Fed. R. Civ. P. 38(b)(1), Plaintiff demands a trial by jury of all  
27 issues so triable.  
28

1 Dated: November 9, 2022

2  
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